

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARIANNA BELLI, et al.,

Plaintiffs,

v.

NESTLÉ USA, INC.,

Defendant.

Case No. 5:14-cv-00286-PSG

**ORDER GRANTING MOTION FOR
LEAVE TO FILE MOTION FOR
RECONSIDERATION**

(Re: Docket No. 26)

Earlier in this case, the court dismissed Plaintiff Marianna Belli's claim for restitution/unjust enrichment.¹ After observing that the California and other federal courts have divided on the viability of such a claim under California law, the court sided with the doubters. The court specifically held that "[g]iven that Plaintiffs' quasi-contract theory rests on the same allegations already covered by their other claims, which also provide for restitution as a remedy, the claim is 'merely duplicative of statutory or tort claims' and must be dismissed."²

Earlier this month, the Ninth Circuit held otherwise. In *Astiana v. Hain Celestial Group*. The appellate court reversed the trial court's dismissal of the plaintiff's unjust enrichment claim.³

¹ See Case No. 12-cv-2272-PSG, Docket No. 74 at 20-21.

² *Id.* at 21 (citations omitted).

³ See Case No. 12-17596, 2015 WL 1600205, at *7 (9th Cir. Apr. 10, 2015).

1 The Ninth Circuit explained in no uncertain terms that “[t]o the extent the district court concluded
2 that the cause of action was nonsensical because it was duplicative of or superfluous to Astiana’s
3 other claims, this is not grounds for dismissal.”⁴

4 Whatever this court’s own views may be, it fully appreciates that whenever the appellate
5 courts say jump, the only remaining question is how high. And so it appears here. Plaintiff’s
6 motion for leave to file a motion for reconsideration is GRANTED. No later than April 30, 2015,
7 each party may file a brief of up to five pages on the specific issue of whether *Astiana* requires that
8 Plaintiff be allowed to pursue a duplicative claim for unjust enrichment. No hearing shall be held.
9

10 **SO ORDERED.**

11 Dated: April 24, 2015

12 
13 PAUL S. GREWAL
14 United States Magistrate Judge
15
16
17
18
19
20
21
22
23
24
25
26

27
28 ⁴ *Id.*